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*Attorney for Plaintiff Doe*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

John Doe,

Plaintiff,

v.

Accurate Background, LLC,

Defendant.

Case No.: **2:21-cv-01629-MTM**

**PLAINTIFF’S RENEWED  
CONSENT MOTION TO  
PROCEED BY PSEUDONYM  
AND FOR PROTECTIVE ORDER  
AND MEMORANDUM IN  
SUPPORT**

Plaintiff, John Doe, respectfully submits his renewed Consent Motion to Proceed by Pseudonym and for entry of a Protective Order in his action against Defendant Accurate Background, LLC (“Accurate” or “Defendant”) for his protection and for the reasons explained herein.

**I. INTRODUCTION**

This case is brought pursuant to the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 et seq., which protects consumers from exposure of private or inaccurate facts. The FCRA acknowledges the importance of confidentiality in its description of the purpose of the Act:

1 It is the purpose of this subchapter to require that consumer reporting  
2 agencies adopt reasonable procedures for meeting the needs of commerce for  
3 consumer credit, personnel, insurance, and other information in a manner  
4 which is fair and equitable to the consumer, with regard to  
the ***confidentiality, accuracy, relevancy, and proper utilization of such  
information*** in accordance with the requirements of this subchapter.

5 15 U.S.C. § 1681(b) (emphasis supplied).

6 The FCRA itself provides that “[t]here is a need to insure that consumer reporting  
7 agencies exercise their grave responsibilities with fairness, impartiality, and a respect for  
8 the consumer’s right to privacy.” 15 U.S.C. § 1681(a)(4). In order to protect consumers  
9 as fully as possible from unwarranted disclosures, the FCRA provides for statutory  
10 penalties, as well as recovery of compensatory damages and punitive damages and  
11 attorney-fee-shifting provisions.  
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14 This court has previously granted Plaintiff’s motion to proceed in pseudonym in  
15 two other cases, *Doe v. PreCheck, Inc.*, 2:21cv1129-DLR, and *Doe v. Tempe St. Luke’s*  
16 *Hospital*, 2:21cv1122-DLR.  
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18 Accurate violated 15 U.S.C. §§ 1681e(b), 1681(i), and 1681k(a)(1) by failing to  
19 use reasonable procedures to ensure it only reported maximally accurate information  
20 about Plaintiff; failing to reasonably investigate Plaintiff’s dispute; failing to maintain  
21 strict procedures to ensure that public records information that is likely to have an adverse  
22 impact on a consumer’s employment is “complete and up to date”; and failing to timely  
23 provide the required FCRA notices to Plaintiff. Accurate sold to Plaintiff’s employer,  
24 Freeway Insurance, a franchise or partner of Confie Holding II, Co., the largest personal  
25 line insurance distributor in the United States (hereafter referred to as “Confie/Freeway”),  
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1 a consumer report that inaccurately detailed Plaintiff's criminal history. The inaccurate  
2 information Accurate provided to Confie/Freeway ultimately cost Plaintiff his new job  
3 just as he was preparing to take an insurance exam. If further publicized, the inaccurate  
4 information will likely continue to prevent Plaintiff from obtaining gainful employment.  
5

## 6 **II. RELEVANT FACTUAL BACKGROUND**

7 On April 15, 2016, Plaintiff was indicted on four counts of Trafficking In Stolen  
8 Property in the first degree; four counts of Forgery of a Credit Card, with intent to  
9 defraud; and one count of Burglary in the second degree. However, on November 28,  
10 2016, Plaintiff entered into a plea agreement that dismissed seven of the counts and  
11 reduced the remaining two. Plaintiff was ultimately convicted of one count of Fraudulent  
12 Use of a Credit Card, a Class 1 Misdemeanor and one count of Theft, an undesignated  
13 Class 6 Felony. However, Plaintiff's plea agreement provided that the theft charge would  
14 be reduced to a misdemeanor upon completion of his sentence. Plaintiff completed his  
15 sentence in 2017. Upon release, the sentencing Court reduced Plaintiff's felony  
16 conviction to a misdemeanor on or about November 8, 2017 in accordance with the plea  
17 agreement. Thereafter, Plaintiff's criminal record consisted only of two misdemeanors.  
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21 Plaintiff applied for a position at Freeway Insurance ("Confie/Freeway") in or  
22 around February 2021. Plaintiff began working for Confie/Freeway in or around March  
23 2021. As part of the onboarding process, Plaintiff authorized Confie/Freeway to pull an  
24 employment-purposed consumer report. Confie/Freeway requested the report from  
25 Defendant Accurate Background, LLC. Accurate supplied a final inaccurate report  
26 containing the felony conviction to Confie/Freeway on or about March 23, 2021.  
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1 Accurate has never supplied a copy of the aforementioned report to Plaintiff and a copy  
2 of the report or a summary of his rights at the time Accurate supplied the report to  
3 Confie/Freeway  
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5 Instead, Confie/Freeway provided a copy of the report to Plaintiff, together with  
6 a pre-adverse action notice on or about April 4, 2021, more than a week and a half after  
7 Accurate provided the “most recent complete date” report to Confie/Freeway. It was  
8 when Confie/Freeway provided this report that Plaintiff learned that the employment-  
9 purposed consumer report sold by Accurate to his employer included a false, incomplete  
10 and outdated public record that indicated Plaintiff was convicted of a felony without any  
11 indication that it was reduced to a misdemeanor.  
12

13 Mr. Doe was terminated from his employment at Confie/Freeway in or around  
14 April 2021.  
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### 16 **III. LEGAL STANDARD**

17 “[T]he Ninth Circuit has held that pleading through the use of fictitious name is  
18 only permitted in the most unusual of cases. *Does I thru XXIII v. Advanced Textile Corp.*,  
19 214 F.3d 1058, 1067-68 (9th Cir. 2000). These are situations where ‘nondisclosure of a  
20 party’s identity is necessary to protect a person from harassment, injury, ridicule, or  
21 personal embarrassment.’ *Advanced Textile*, 214 F.3d at 1067-68. The Ninth Circuit has  
22 described three types of cases that are appropriate for fictitious pleading; (1) where  
23 identification creates the risk of physical retaliation, *id.* at 1068; (2) **where anonymity is**  
24 **needed to protect highly personal information**, such as medical reports or a person's  
25 sexual orientation, *id.* (citing *Doe v. United Services Life Ins. Co.*, 123 F.R.D. 437  
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1 (S.D.N.Y. 1988)); (3) and where anonymity protects a party from criminal  
2 prosecution. *Id.* (citing *Doe v. Stegall*, 653 F.2d 180 (5th Cir. 1981)).” *Ross v. Corich*,  
3 No. CV 08-0371-PHX-MHM, at \*2 (D. Ariz. Sep. 5, 2008) (emphasis added).  
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5 The Ninth Circuit applies “a balancing test ... when determining whether a  
6 plaintiff, ... should be allowed to proceed under a fictitious name. This balancing test[]  
7 asks the Court to weigh the ‘party’s need for anonymity’ against ‘prejudice to the  
8 opposing party and the public’s interest in knowing that party’s identity.’” *Ross*, No. CV  
9 08-0371-PHX-MHM, at \*2 (quoting *Advanced Textile*, 214 F.3d at 1068).  
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#### 11 **IV. LEGAL ARGUMENT**

12 Plaintiff is filing this suit against Defendant Accurate for violating the FCRA.  
13 Accurate violated the FCRA by publishing inaccurate public records information that  
14 was likely to have an adverse effect on Plaintiff’s employment, failing to employ  
15 procedures to prevent the publication of false information and to ensure that only  
16 complete and up to date information was furnished to his employer, failing to provide  
17 him with a copy of his employment-purposed consumer report at the time it sold the  
18 report to Plaintiff’s employer, and failing to conduct a reasonable reinvestigation of  
19 Plaintiff’s dispute of the accuracy of the report. Accurate’s failure to comply with its  
20 obligations under the FCRA caused Plaintiff to lose his job with Confie/Freeway. That  
21 inaccurate information ultimately cost Plaintiff his new job, and it could cost him more  
22 employment opportunities if it is further publicized.  
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26 Plaintiff accepted the State’s plea deal in 2017 specifically because it would allow  
27 him to avoid the stigma associated with being a “felon.” The Court approved Plaintiff’s  
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1 plea agreement because he had **never** been convicted of a crime before, and **none** of his  
2 charges were violent. If it were not for Defendant's violations of the FCRA, Plaintiff  
3 would have no reason to publicly explain that this misdemeanor was, at one time, a felony.  
4

5 Although "[t]he decision to allow pseudonyms is 'discretionary,'" Plaintiff  
6 understands that this Court's authority "is cabined by the Ninth Circuit's express  
7 guidance." *Jane Roes I-2 v. SFBSC Management, LLC*, 77 F. Supp. 3d 990, 993 (N.D.  
8 Cal. 2015) (quoting *Advanced Textile Corp.*, 214 F.3d at 1067–68). Plaintiff recognizes  
9 that this case is not one that the Ninth Circuit has explicitly determined necessitates  
10 anonymity. However, Plaintiff asks this Court to exercise its discretion and allow him to  
11 proceed as "John Doe." The State reduced Plaintiff's felony charge to a misdemeanor  
12 nearly four years ago. Plaintiff has worked incredibly hard to get back on track and  
13 contribute positively to society. There is no reason that Plaintiff should be forced to  
14 publicly identify himself as someone who was once charged with a felony.  
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17 **A. Anonymity Is Necessary To Protect Highly Sensitive Information That**  
18 **May Result In Unwarranted, Negative Stigma.**

19 Although it is possible to work in the insurance industry with misdemeanor  
20 convictions, it is nearly impossible for Plaintiff to obtain gainful employment if he is  
21 classified as a "felon." In attempting to vindicate his FCRA rights, he may be subjected  
22 to additional harm, ridicule and deprivation of employment.  
23

24 Plaintiff agreed to a jail sentence specifically to obtain a reduction of a felony to  
25 a misdemeanor, in hopes that he would still be able to gain meaningful employment upon  
26 his release. Unfortunately, Accurate provided an employment-purposed consumer report  
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1 that included inaccurate information about Plaintiff's criminal history. Even after  
2 Plaintiff informed Accurate that the information it was reporting about his charge was  
3 inaccurate, Plaintiff was terminated.

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5 Those facts alone suggest that it would be detrimental to Plaintiff to proceed in  
6 this action under his legal name. This lawsuit should correct the inaccurate information  
7 in Accurate's records, and a potential employer should not receive the inaccurate  
8 information in the future. Plaintiff is desperate to put the past behind him. However, if  
9 Plaintiff is required to proceed under his legal name, it is very likely that a potential  
10 employer could associate this lawsuit with Plaintiff. Plaintiff will need to disclose  
11 information generally unavailable to the public to fully pursue his claims against  
12 Defendant. Confie/Freeway, an employer that had already hired Plaintiff and invested in  
13 his training, was unwilling to look past the stigma associated with being a "felon." There  
14 is a possibility that a future employer will respond as Confie/Freeway did and decide that  
15 even the **possibility** that Plaintiff was charged with a felony makes him unemployable.  
16 Plaintiff should not be forced to shoulder the stigma of a felony conviction if the State  
17 already decided to reduce the charge to a misdemeanor.

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21 **B. Allowing Plaintiff to Proceed Under A Pseudonym Will Not Prejudice**  
22 **Defendant.**

23 Plaintiff is known to Defendant, so Plaintiff's decision to formally proceed by  
24 pseudonym is unlikely to have any impact on litigation. Additionally, Plaintiff's  
25 Complaint and this Motion contain factual details that should allow Defendant to  
26 ascertain Plaintiff's identity upon a review of Defendant's own records. However,  
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1 Plaintiff's Counsel is willing to meet and confer with Defendant's Counsel to provide  
2 Plaintiff's identifying information, if necessary, so long as Defendant agrees to keep his  
3 identity confidential.

4  
5 **C. The Public Is Not Interested In Plaintiff's Identity.**

6 Plaintiff concedes that the public has a general interest in knowing the not only of  
7 parties to litigation, but also to identity of a convicted individual. However, the public's  
8 interest in Plaintiff's identity was already served during Plaintiff's criminal case. If the  
9 public is truly interested in Plaintiff's criminal history, it is a matter of public record and  
10 can be retrieved from Pinal County. However, the public's interest in the identity of the  
11 Plaintiff is outweighed by the harm it may do him by erasing the value of reduction of  
12 a felony to a misdemeanor and revealing details of the felony conviction that he has a  
13 right to be free from its stigma.  
14

15  
16 Regardless, the public's interest in this litigation is not related to Plaintiff's  
17 identity or criminal history, specifically. Instead, the public's interest lies in the  
18 protection of consumers' rights under the FCRA. The public has an interest in ensuring  
19 that Defendant Accurate complies with its obligations under the FCRA, and only  
20 publishes maximally accurate public records information about consumers. Those  
21 interests can be served even if Plaintiff is permitted to proceed by pseudonym.  
22

23 **V. CONCLUSION**

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25 Plaintiff should be permitted to proceed by pseudonym and for entry of a  
26 Protective Order because the FCRA was enacted **specifically** to protect consumers from  
27 being harmed by inaccurate information in credit reports. Moreover, the balancing test  
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1 employment by courts in the Ninth Circuit favors anonymity in this case. *See Ross*, No.  
2 CV 08-0371-PHX-MHM, at \*2.

3 **MEET AND CONFER CERTIFICATION**

4  
5 Pursuant to Fed. R. Civ. P. 26(c)(1), Plaintiff hereby certifies that he has in good  
6 faith conferred with counsel for Defendant Accurate Background, LLC in an effort to  
7 resolve the dispute without court action.

8 Counsel for Defendant consents to the relief sought in Plaintiff's Motion.

9  
10 Respectfully submitted

11 /s/ Susan Rotkis

12 Susan Rotkis

13 AZ Bar # 032866

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17 *Attorneys for Plaintiff Doe*